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\*The *Arizona Agency Handbook* was revised by the Office of the Arizona Attorney General in 2011.

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# Part I

## Arizona Revised Statutes

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Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records  
Article 1 - Requirements for Material Used

**§ 39-101. Permanent public records; quality; storage; violation; classification**

- A. Permanent public records of the state, a county, city or town, or other political subdivision of the state, shall be transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state library, archives and public records.
- B. Permanent public records transcribed or kept as provided in subsection A shall be stored and maintained according to standards for the storage of permanent public records established by the director of the Arizona state library, archives and public records.
- C. A public officer charged with transcribing or keeping such public records who violates this section is guilty of a class 2 misdemeanor.

**§ 39-102. Annual report; copies**

Unless otherwise specifically required by law, each agency, board, commission and department which prepares an annual report of its activities shall prepare and distribute as provided by law copies of such annual report on twenty pound bond paper printed with black ink except that the cover and back pages may be of sixty-five pound or less cover paper.

**§ 39-103. Size of public records; exemptions**

- A. All public records of this state or a political subdivision of this state created on paper, regardless of weight or composition, shall conform to standard letter size of eight and one-half inches by eleven inches, within standard paper manufacturing tolerances.
- B. This section does not apply to public records smaller than eight and one-half inches by eleven inches, public records otherwise required by law to be of a different size, engineering drawings, architectural drawings, maps, computer generated printout, output from test measurement and diagnostic equipment, machine generated paper tapes and public records otherwise exempt by law. Additionally, records kept exclusively on photography, film, microfiche, digital imaging or other type of reproduction or electronic media as provided in § 41-1348, subsection A are exempt from the size restrictions of this section. On written application the director of the Arizona state library, archives and public records may approve additional exemptions from this section if based on such application the director finds that the cost of producing a particular type of public record in accordance with subsection A of this section is so great as to not be in the best interests of this state.

## Article 2 - Searches and Copies

### **§ 39-121. Inspection of public records**

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

#### **39-121.01. Definitions; maintenance of records; copies, printouts or photographs of public records; examination by mail; index**

A. In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.
2. "Public body" means the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from the state or any political subdivision of the state, or expending monies provided by the state or any political subdivision of the state.

B. All officers and public bodies shall maintain all records, including records as defined in § 41-1350, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which are supported by monies from the state or any political subdivision of the state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-151.15 and 41-151.19.

D. Subject to § 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's web site to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if

the facilities are available, except that public records for purposes listed in § 39-122 or 39-127 shall be furnished without charge.

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in § 41-1001, but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.
  3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record which a person has a right to inspect, such person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of such custodian.
- E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

**§ 39-121.02. Action on denial of access; costs and attorney fees; damages**

- A. Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.
- B. The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. Nothing in this paragraph shall limit the rights of any party to recover attorney fees pursuant to § 12-341.01, subsection C, or attorney fees, expenses and double damages pursuant to § 12-349.
- C. Any person who is wrongfully denied access to public records pursuant to this article has a cause of action against the officer or public body for any damages resulting from the denial.

**§ 39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition**

- A. When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:
1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
  2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
  3. The value of the reproduction on the commercial market as best determined by the public body.
- B. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.
- C. A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

- D. For the purposes of this section, “commercial purpose” means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

**§ 39-122. Free searches for and copies of public records to be used in claims against United States; liability for noncompliance**

- A. No state, county or city, or any officer or board thereof shall demand or receive a fee or compensation for issuing certified copies of public records or for making search for them, when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof.
- B. Notaries public shall not charge for an acknowledgment to a document which is to be so filed or presented.
- C. The services specified in subsections A and B shall be rendered on request of an official of the United States, a claimant, his guardian or attorney. For each failure or refusal so to do, the officer so failing shall be liable on his official bond.

**§ 39-123. Information identifying eligible persons; confidentiality; definitions**

- A. Nothing in this chapter requires disclosure from a personnel file by a law enforcement agency or employing state or local governmental entity of the home address or home telephone number of eligible persons.
- B. The agency or governmental entity may release the information in subsection A of this section only if either:
1. The person consents in writing to the release.
  2. The custodian of records of the agency or governmental entity determines that release of the information does not create a reasonable risk of physical injury to the person or the person's immediate family or damage to the property of the person or the person's immediate family.
- C. A law enforcement agency may release a photograph of a peace officer if either:



1. The peace officer has been arrested or has been formally charged by complaint, information or indictment for a misdemeanor or a felony offense.
  2. The photograph is requested by a representative of a newspaper for a specific newsworthy event unless:
    - (a) The peace officer is serving in an undercover capacity or is scheduled to be serving in an undercover capacity within sixty days.
    - (b) The release of the photograph is not in the best interest of this state after taking into consideration the privacy, confidentiality and safety of the peace officer.
    - (c) An order pursuant to § 28-454 is in effect.
- D. This section does not prohibit the use of a peace officer's photograph that is either:
1. Used by a law enforcement agency to assist a person who has a complaint against an officer to identify the officer.
  2. Obtained from a source other than the law enforcement agency.
- E. This section does not apply to a certified peace officer or code enforcement officer who is no longer employed as a peace officer or code enforcement officer by a state or local government entity.
- F. For the purposes of this section:
1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.
  2. "Commissioner" means a commissioner of the superior court.
  3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.
  4. "Eligible person" means a peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counterterrorism center in the department of public

- safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.
5. “Judge” means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.
  6. “Justice” means a justice of the United States or Arizona supreme court or a justice of the peace.
  7. “Law enforcement support staff member” means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.
  8. “Peace officer” has the same meaning prescribed in §13-105.
  9. “Prosecutor” means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.
  10. “Public defender” means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

**§ 39-124. Releasing information identifying an eligible person; violations; classification; definitions**

- A. Any person who is employed by a state or local government entity and who, in violation of § 39-123, knowingly releases the home address or home telephone number of an eligible person with the intent to hinder an investigation, cause physical injury to an eligible person or the eligible person's immediate family or cause damage to the property of an eligible person or the eligible person's immediate family is guilty of a class 6 felony.
- B. Any person who is employed by a state or local government entity and who, in violation of § 39-123, knowingly releases a photograph of a peace officer with the intent to hinder an investigation, cause physical injury to a peace officer or the peace officer's immediate family or cause damage to the property of a peace officer or the peace officer's immediate family is guilty of a class 6 felony.
- C. For the purposes of this section:
  1. “Code enforcement officer” means a person who is employed by a state or local government and whose duties include performing field inspections of buildings,

structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.

2. "Commissioner" means a commissioner of the superior court.
3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.
4. "Eligible person" means a peace officer, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counterterrorism center in the department of public safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.
5. "Judge" means a judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the Arizona court of appeals, the superior court or a municipal court.
6. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.
7. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.
8. "Peace officer" has the same meaning prescribed in § 13-105.
9. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.
10. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

**§ 39-125. Information relating to location of archaeological discoveries and places or objects included or eligible for inclusion on the Arizona register of historic places; confidentiality**

Nothing in this chapter requires the disclosure of public records or other matters in the office of any officer that relate to the location of archaeological discoveries as described in § 41-841 or 41-844 or places or objects that are included on or may qualify for inclusion on the Arizona register of historic places as described in § 41-511.04, subsection A, paragraph 9. An officer may decline to release this information if the officer determines that the release of the information creates a reasonable risk of vandalism, theft or other damage to the archaeological discoveries or the places or objects that are included on or may qualify for inclusion on the register. In making a decision to disclose public records pursuant to this section, an officer may consult with the director of the Arizona state museum or the state historic preservation officer.

**§ 39-126. Federal risk assessments of infrastructure; confidentiality**

Nothing in this chapter requires the disclosure of a risk assessment that is performed by or on behalf of a federal agency to evaluate critical energy, water or telecommunications infrastructure to determine its vulnerability to sabotage or attack.

**39-127. Free copies of police reports and transcripts for crime victims; definitions**

- A. A victim of a criminal offense that is a part I crime under the statewide uniform crime reporting program or an immediate family member of the victim if the victim is killed or incapacitated has the right to receive one copy of the police report from the investigating law enforcement agency at no charge and, on request of the victim, the court or the clerk of the court shall provide, at no charge, the minute entry or portion of the record of any proceeding in the case that arises out of the offense committed against the victim and that is reasonably necessary for the purpose of pursuing a claimed victim's right.
- B. For the purposes of this section, “criminal offense”, “immediate family” and “victim” have the same meanings prescribed in § 13-4401.

**§ 39-128. Disciplinary records of public officers and employees; disclosure; exceptions**

- A. A public body shall maintain all records that are reasonably necessary or appropriate to maintain an accurate knowledge of disciplinary actions, including the employee responses to all disciplinary actions, involving public officers or employees of the public body. The records shall be open to inspection and copying pursuant to this article, unless inspection or disclosure of the records or information in the records is contrary to law.
- B. This section does not:

1. Require disclosure of the home address, home telephone number or photograph of any person who is protected pursuant to §§ 39-123 and 39-124.
2. Limit the duty of a public body or officer to make public records open to inspection and copying pursuant to this article.

## Article 3 - Lost Records

### **§ 39-141. Proof of certain lost or destroyed documents or instruments**

Any deed, bond, bill of sale, mortgage, deed of trust, power of attorney or conveyance which is required or permitted by law to be acknowledged or recorded which has been so acknowledged or recorded, or any judgment, order or decree of a court of record in this state or the record or minute containing such judgment, which is lost or destroyed, may be supplied by parol proof of its contents.

### **§ 39-142. Action for restoration and substitution of lost or destroyed documents**

Upon loss or destruction of an instrument as indicated in § 39-141, a person interested therein may bring an action in the superior court of the county where the loss or destruction occurred for restoration and substitution of such instrument against the grantor in a deed, or the parties interested in the instrument, or the parties who were interested adversely to plaintiff at the time of the rendition of judgment, or who are then adversely interested, or the heirs and legal representatives of such parties.

### **§ 39-143. Judgment of restoration; recording of judgment; judgment as substitute for original instrument**

- A. If upon the trial of the action provided for in § 39-142, the court finds that such instrument existed, and has been lost or destroyed and determines the contents thereof, it shall enter a judgment containing the finding and a description of the lost instrument and contents thereof.
- B. A certified copy of the judgment may be recorded, and shall be substituted for and have the same force and effect as the original instrument.

### **§ 39-144. Recording of certified copies of lost or destroyed records or records of a former county**

Certified copies from a record of a county, the record of which has been lost or destroyed, and certified copies from records of the county from which a new county was created, may be recorded in such county when the loss of the original has been first established.

### **§ 39-145. Re-recording of original papers when record destroyed**

When the original papers have been preserved but the record thereof has been lost or destroyed, they may again be recorded within four years from the loss or destruction of such record. The last registration shall have force and effect from the date of the original registration.

## Article 4 – False Instruments and Records

### **§ 39-161. Presentment of false instrument for filing; classification**

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section “instrument” includes a written instrument as defined in § 13-2001.

Title 41 – State Government  
Chapter 1 – Executive Officers  
Article 2.1 – Arizona State Library, Archives and Public Records Established  
in the Office of the Secretary of State

**§ 41-151.12. Records; records management; powers and duties of director; fees; records services fund**

- A. The director is responsible for the preservation and management of records. In addition to other powers and duties, the director shall:
1. Establish standards, procedures and techniques for effective management of records.
  2. Make continuing surveys of record keeping operations and recommend improvements in current record management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records.
  3. Establish standards and procedures for the preparation of schedules providing for the retention of records of continuing value and for the prompt and orderly disposal of records no longer possessing sufficient administrative, legal or fiscal value to warrant their further keeping.
  4. Establish criteria for designation of essential records within the following general categories:
    - (a) Records containing information necessary to the operations of government in the emergency created by a disaster.
    - (b) Records containing information necessary to protect the rights and interests of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.
  5. Reproduce or cause to be reproduced essential records and prescribe the place and manner of their safekeeping.
  6. Obtain such reports and documentation from agencies as are required for the administration of this program.
  7. Request transmittal of the originals of records produced or reproduced by agencies of the state or its political subdivisions pursuant to § 41-1348 or certified negatives, films or electronic media of such originals, or both, if in the director's judgment such records may be of historical or other value.

8. On request, assist and advise in the establishment of records management programs in the legislative and judicial branches of the state and provide program services similar to those available to the executive branch of state government pursuant to this article.
  9. Establish a fee schedule to systematically charge state agencies, political subdivisions of this state and other governmental units of this state for services described in this section and § 41-1345.01 and deposit monies received from fees in the records services fund established by subsection B of this section.
  10. Subject to approval of the secretary of state, establish a fee schedule to charge state agencies, political subdivisions of this state and other governmental units of this state for services and expenses incurred by the state library in obtaining copies of those reports, documents and publications that are required to be delivered, supplied or provided pursuant to §§ 35-103, 41-1335 and 41-1338 and deposit these monies in the records services fund established by subsection B of this section.
- B. A records services fund is established consisting of monies deposited pursuant to subsection A, paragraphs 9 and 10 of this section. The director shall administer the fund for the purposes provided in subsection A of this section. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of § 35-190 relating to lapsing of appropriations.

**§ 41-151.13. Records management officer; duties**

- A. The state library shall employ a records management officer who is responsible for the direction and control of the records management program. The records management officer shall at the direction of the director administer the provisions of section 41-151.12.
- B. The state library shall:
1. Through consultation and education, provide for an efficient and contemporary records management program using modern techniques to facilitate the efficient and economic creation, maintenance, control, retention and disposition of records as defined in section 41-151.18.
  2. Operate a records management center for the maintenance and housing of inactive non-archival records. The records management center shall be the only inactive records center operated by a state agency. State agencies may use other facilities for inactive records storage with prior approval of the director.
  3. Establish standards and procedures for records accepted for storage.



4. Operate a secure vault as part of the records management center for the housing and maintenance of micrographic, machine read and selected essential records.
5. Operate a preservation imaging function that is responsible for:
  - (a) The efficient and coordinated use of micrographics and digital imaging equipment, techniques and personnel to achieve optimum quality, effectiveness and economy in the production of source document micrographics and digital imaging.
  - (b) The processing and duplication of microfilm produced by the preservation imaging operation and film produced by other agencies of this state.

**§ 41-151.14. State and local public records management; violation; classification; definition**

A. The head of each state and local agency shall:

1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities.
3. Submit to the director, in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.
4. Submit a list of public records in the agency's custody that are not needed in the transaction of current business and that are not considered to have sufficient administrative, legal or fiscal value to warrant their inclusion in established disposal schedules.
5. Submit to the director lists of all essential public records in the custody of the agency.
6. Cooperate with the director in the conduct of surveys.
7. Designate an individual within the agency to manage the records management program of the agency. The designated individual:
  - (a) Must be at a level of management sufficient to direct the records management program in an efficient and effective manner.

- (b) Shall act as coordinator and liaison for the agency with the state library.
8. Comply with rules, standards and procedures adopted by the director.
- B. The governing body of each county, city, town or other political subdivision shall promote the principles of efficient record management for local public records. Such governing body shall, as far as practicable, follow the program established for the management of state records. The director shall, upon request of the governing body, provide advice and assistance in the establishment of a local public records management program.
- C. A head of a state or local agency who violates this section is guilty of a class 2 misdemeanor.
- D. For the purposes of this section, “records management” means the creation and implementation of systematic controls for records and information activities from the point where they are created or received through final disposition or archival retention, including distribution, use, storage, retrieval, protection and preservation.

**§ 41-151.15. Preservation of public records**

- A. All records made or received by public officials or employees of this state in the course of their public duties are the property of this state. Except as provided in this article, the director and every other custodian of public records shall carefully protect and preserve the records from deterioration, mutilation, loss or destruction and, when advisable, shall cause them to be properly repaired and renovated. All paper, ink and other materials used in public offices for the purpose of permanent records shall be of durable quality and shall comply with the standards established pursuant to § 39-101. Additionally, the custodian of records that keeps photography, film, microfiche, digital imaging or other types of reproduction or electronic media pursuant to § 41-1348, subsection A shall protect records from loss or destruction pursuant to standards that are established by the director.
- B. Records shall not be destroyed or otherwise disposed of by any agency of this state unless it is determined by the state library that the record has no further administrative, legal, fiscal, research or historical value. The original of any record produced or reproduced pursuant to § 41-1348 may be determined by the state library to have no further administrative, legal, fiscal, research or historical value. A person who destroys or otherwise disposes of records without the specific authority of the state library is in violation of § 38-421.

**§ 41-151.16. Production and reproduction of records by agencies of the state and political subdivisions; admissibility; violation; classification**

- A. Each agency of this state or any of its political subdivisions may implement a program for the production or reproduction by photography or other method of

reproduction on film, microfiche, digital imaging or other electronic media of records in its custody, whether obsolete or current, and classify, catalogue and index such records for convenient reference. The agency, before the institution of any such program of production or reproduction, shall obtain approval from the director of the types of records to be produced or reproduced and of the methods of production, reproduction and storage and the equipment which the agency proposes to use in connection with the production, reproduction and storage. Approval pursuant to this subsection is necessary for digitizing programs but not for individual instances of digitization. On approval from the director, the source documents may be destroyed, but only after an administrative audit and after safeguards are in place to protect the public records pursuant to section 41-151.15, subsection A.

- B. Except as otherwise provided by law, records reproduced as provided in subsection A of this section are admissible in evidence.
- C. A head of an agency of this state or a political subdivision of this state who violates this section is guilty of a class 2 misdemeanor.

#### **§ 41-151.17. Duties relating to historical value**

- A. The state library shall:
  - 1. Determine whether public records presented to it are of historical value.
  - 2. Dispose of records determined to be of no historical value.
  - 3. Accept those records deemed by a public officer having custody of the records to be unnecessary for the transaction of the business of the public officer's office and deemed to be of historical value.
- B. All public records of any public office, upon the termination of the existence and functions of the office, shall be checked by the state library and either disposed of or transferred to the custody of the state library, in accordance with this article. If a public office is terminated or reduced by the transfer of its powers and duties to another office or to other offices, its appropriate public records shall pass with the powers and duties transferred.

#### **§ 41-151.18. Definition of records**

In this chapter, unless the context otherwise requires, "records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to § 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or

other activities of the government, or because of the informational and historical value of data contained therein. Library or museum material made or acquired solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference and stocks of publications or documents intended for sale or distribution to interested persons are not included within the definition of records as used in this chapter.

**§ 41-1351. Determination of value; disposition**

Every public officer who has public records in the public officer's custody shall consult periodically with the state library and the state library shall determine whether the records in question are of legal, administrative, historical or other value. Those records determined to be of legal, administrative, historical or other value shall be preserved. Those records determined to be of no legal, administrative, historical or other value shall be disposed of by such method as the state library may specify. A report of records destruction that includes a list of all records disposed of shall be filed at least annually with the state library on a form prescribed by the state library.

## Part II

### Arizona Agency Handbook

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## CHAPTER 6

### PUBLIC RECORDS

**6.1 Scope of this Chapter.** This Chapter presents guidelines for agencies to use in determining which documents are subject to public scrutiny under the Arizona public record law, A.R.S. §§ 39-101 to -161, and discusses the procedure for handling requests for access to public records. It also discusses the preservation and disposition of records.

#### **6.2 Scope of Public Records Requirements.**

##### **6.2.1 Arizona's Policy of Public Disclosure.**

Section 39-121, A.R.S., sets forth the general policy of this State with respect to public inspection of governmental records: "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." The public records statute seeks to increase public access to government information and to make government agencies accountable to the public.

##### **6.2.1.1 What is a Public Record.**

As a general rule, "all records required to be kept under A.R.S. § 39-121.01(B) are presumed open to the public for inspection as public records." *Carlson v. Pima County*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984). Section 39-121.01(B), A.R.S., requires all officers and public bodies to maintain records, including records defined in A.R.S. § 41-1350, reasonably necessary to provide an accurate accounting of their official activities and of any government-funded activities. Section 41-1350, A.R.S., defines "records" as all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, including prints or copies of such items produced or reproduced on film or electronic media pursuant to § 41-1348, made or received by any governmental agency in pursuance of law or in connection with the transaction of public business and preserved or appropriate for preservation by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. Section 39-121 also requires public officers to disclose "other matters." "Other matters subject to the public's right of access include documents which are not required by law to be filed as public records. . . ." *Salt River Pima-Maricopa Indian Community v. Rogers*, 168 Ariz. 531, 539, 815 P.2d 900, 908 (1991). "Other matters" include documents held by the public officer in his or her official capacity and in which the public's interest in disclosure outweighs the governmental interest in confidentiality. *Id.* The Court of Appeals has therefore endorsed the Attorney General's opinion that: the proper way to view all requests for information is not to determine whether or not a record is technically a public record or other matter, but instead to determine if release of the information would have an important and harmful effect upon the official duties of the official or agency. *Church of Scientology v. City of Phoenix Police Dep't*, 122 Ariz. 338, 339, 594 P.2d 1034, 1035 (Ct. App. 1979) (quoting *Ariz. Att'y Gen. Op. 76-43* (1976)). Few, if any, records in the possession or control of a public officer will not be "public records." *Carlson*, 141 Ariz. at 490, 687

P.2d at 1245. For examples of documents that have been found to be "public records" and "other matters," see Section 6.3 infra.

#### **6.2.1.2 Persons Subject to the Public Records Laws.**

The laws governing public records apply to "any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body." A.R.S. § 39-121.01(A)(1). Public body is defined as "the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by funds from the state or any political subdivision thereof, or expending funds provided by the state or any political subdivision thereof." *Id.*, § (A)(2). This definition differs from and is more inclusive than the term "public body" defined in the State's Open Meeting Law. A.R.S. § 38-431(5). See, e.g., Ariz. Att'y Gen. Op. I95-010 (both Public Records Law and Open Meeting Law apply to charter schools but a different analysis applies); Ariz. Att'y Gen. Op. I85-101 (for public records purposes, the county public defender is a public official and therefore records made or received by that office are records of the State subject to the requirements discussed in this Chapter). By definition, the employees of public officers and public bodies are also bound by public records laws.

### **6.3 Types of Public Records.**

The following are examples of types of documents that have been found to be "public records and other matters" and thus are available upon request to the public except for any portions of the document that may be protected from disclosure (discussed in Section 6.5 below):

1. Permits and application forms for permits, Ariz. Att'y Gen. Op. I80-097;
2. Documents indicating the number of applicants for personnel positions by race and national origin, where no personal identification of the applicant is sought, Ariz. Att'y Gen. Op. I80-044;
3. Official records of proceedings of state boards and commissions, such as the Arizona Board of Tax Appeals, Ariz. Att'y Gen. Op. I79-316, and the Industrial Commission, *Industrial Comm'n v. Holohan*, 97 Ariz. 122, 126, 397 P.2d 624, 627 (1964);
4. Taxpayers' property tax valuations and the Board of Tax Appeals' records on appeals of property tax valuations, Ariz. Att'y Gen. Op. I78-234;
5. Probate files, *Henderson v. Las Cruces Prod. Credit Ass'n*, 6 Ariz. App. 549, 554, 435 P.2d 56, 61 (1967);
6. Budgets of both houses of the Legislature, Ariz. Att'y Gen. Op. 78-76;
7. Records of expenditures of public monies, Ariz. Att'y Gen. Op. 70-1;
8. Annual reports filed by corporations with the Arizona Corporation Commission, *State v. Betts*, 71 Ariz. 362, 366-67, 227 P.2d 749, 752 (1951); Ariz. Att'y Gen. Op. 61-114-L;
9. Books of accounts of municipalities, Ariz. Att'y Gen. Op. 56-8;

10. A county sheriff's "offense report" of an assault by a prisoner in the county jail, *Carlson v. Pima County*, 141 Ariz. 487, 687 P.2d 1242 (1984);
11. Petitions for land annexation by cities, *Moorehead v. Arnold*, 130 Ariz. 503, 505, 637 P.2d 305, 307 (Ct. App. 1981);
12. Autopsy reports prepared by county medical examiners, *Star Publ'g Co. v. Parks*, 178 Ariz. 604, 875 P.2d 837 (Ct. App. 1993); *Ariz. Att'y Gen. Op. I88-130*;
13. Reports of industrial injuries, *Ariz. Att'y Gen. Op. I86-090*;
14. Computer backup tapes containing all documents for County Attorney's Office including e-mail communications of employees, *Star Publ'g Co. v. Pima County Attorney's Office*, 181 Ariz. 432, 891 P.2d 899 (Ct. App. 1994) (County failed to provide specific factual basis to support argument that records were protected from disclosure); and
15. Videotapes held by the Yuma County Police Department, *KPNX-TV v. Superior Court*, 183 Ariz. 589, 905 P.2d 598 (Ct. App. 1995) (but holding that the State properly withheld disclosure of one of two videotapes because of safety and security concerns).

#### **6.4 Denying Public Inspection.**

The custodian of public records may deny inspection when:

1. The record is made confidential by statute, *Berry v. State*, 145 Ariz. 12, 13, 699 P.2d 387, 388 (Ct. App. 1985);
2. The record involves the privacy interests of persons, *Scottsdale Unified School Dist. No. 48 v. KPNX Broad. Co.*, 191 Ariz. 297, 955 P.2d 534, 537 (1998); or
3. Disclosure would be detrimental to the best interests of the State, *Board of Regents v. Phoenix Newspapers, Inc.*, 167 Ariz. 254, 258, 806 P.2d 348, 351 (1991); *KPNX-TV*, 183 Ariz. at 592, 905 P.2d at 601.

**6.4.1 Records Confidential by Statute.** There are over 300 Arizona statutes that address the confidentiality of records. A comprehensive list of the Arizona statutes that may require that all or a portion of governmental records be protected from public disclosure is included at the end of this chapter. Appendix 6.1. Arizona rules may also limit disclosure of certain information. See, e.g., A.A.C. R2-5-105 (limiting public access to information in personnel files to the following: name of employee; date of employment; current and previous class title; name and location of current and previous agencies to which the employee has been assigned; current and previous salaries and dates of each change; name of employee's current or last known supervisor). In addition, federal law may require confidential treatment of certain information. See, e.g., 42 U.S.C. § 405(c)(2)(c)(ii), (viii)(I) (prohibiting disclosure of social security numbers to unauthorized persons). Public officials and employees should review the confidentiality provisions that affect their areas of responsibility to avoid disclosure of confidential information.

**6.4.2 Records Involving Privacy Interests.** The Arizona courts have long recognized personal privacy as an exception to the general rule requiring access to government records. See *Scottsdale Unified School Dist.*, 191 Ariz. at 300, 955 P.2d at 537; *Carlson*,



141 Ariz. At 490, 687 P.2d 1245 (1984). Under this exception, the custodian has discretion to deny public inspection when the disclosure would invade privacy and that invasion outweighs the public's right to know. See *id.* Because privacy is not defined under the Public Records Law, the Arizona Supreme Court relied on United States Supreme Court's definition of privacy under the federal Freedom of Information Act in finding that "information is 'private if it is intended for or restricted to the use of a particular person or group or class of persons: not freely available to the public'" and "the privacy interest encompasses 'the individual's control of information concerning his or her person.'" *Scottsdale Unified School Dist.*, 101 Ariz. at 301, 955 P.2d at 538 (quoting *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763-64 (1989)). A person has a privacy interest in his or her birthdate. *Id.* at 302, 955 P.2d at 538. State employees have a privacy interest in their home addresses and phone numbers. *Ariz. Att'y Gen. Op.* I91-004. Although autopsy reports are subject to the Public Records Law, the privacy interests of survivors may justify nondisclosure in some circumstances. *Ariz. Att'y Gen. Op.* I88-130. The "records of the Industrial Commission's proceedings, orders and awards" are public but "information which is not collected to serve as a memorial of an official transaction or for the dissemination of information is private . . .". *Industrial Comm'n*, 97 Ariz. at 126, 397 P.2d at 627. The public's right to know generally outweighs the privacy concerns of a convicted offender. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 53 (1984).

**6.4.3 Discretionary Refusal to Disclose.** The Arizona Supreme Court has also recognized that an officer or custodian of public records may refuse inspection of public records to protect the best interests of the State where "inspection might lead to substantial and irreparable private or public harm." *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246. As early as 1952, the Arizona Supreme Court recognized an exception to public disclosure for records the disclosure of which would be detrimental to the best interests of the State. *Mathews v. Pyle*, 75 Ariz. 76, 251 P.2d 893 (1952). The standard "detrimental to the best interests of the state" permits a public body to designate a record as confidential only when the "release of information would have an important and harmful effect on the duties of the officials or agency in question." *Board of Regents*, 167 Ariz. at 257-58, 806 P.2d at 351-52 (1991). Public officers must balance the possible adverse impact on the operation of the public body if the information in question is disclosed against the public's right to be informed about the operations of its government. *Id.* at 258, 806 P.2d at 352. When a public officer determines that the harm to the State outweighs the public right to disclosure of a document, he has the burden of specifically demonstrating the harm if his decision is challenged in superior court. *Cox Arizona Publications, Inc. v. Collins*, 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993). Applying the balancing test in *Board of Regents*, the Supreme Court held that the public's interest in ensuring the State's ability to secure the most qualified candidate for university president is more compelling than its interest in knowing the names of all of the "prospects" for the position. *Board of Regents*, 167 Ariz. at 258, 806 P.2d at 352. When a "prospect" is seriously considered and interviewed, the "prospect" becomes a candidate. The court held that the public's interest in knowing which candidates are being considered for the job outweighs "countervailing interests of confidentiality and privacy and the best interests of the State." *Id.*; see also *KPNX-TV*, 183 Ariz. at 593, 905 P.2d at 602 (State justified the

withholding of surveillance camera videotape due to its “security concerns about public disclosure of a videotape showing undercover officers, the evidence locker, and the location of the surveillance camera.”).

A public officer or public body may refuse to disclose documents that contain information protected by a common law privilege where release of the documents would be harmful to the best interests of the State. See, e.g., the informant's privilege, *Grimm v. Arizona Board of Pardons & Paroles*, 115 Ariz. 260, 268-69, 564 P.2d 1227, 1235-36 (1977) (recognizing the "informant's privilege which, with certain exceptions, protects the identity of the informant but not generally the contents of the communication"); *State v. Celaya*, 27 Ariz. App. 564, 567, 556 P.2d 1167, 1170 (1976) (The State may withhold from disclosure the identity of persons who furnish information of violations of law to law enforcement officers in furtherance of the public interest in effective law enforcement"); and the deliberative process privilege, *Grimm*, 115 Ariz. at 269, 564 P.2d at 1235 (agreeing with the reasoning in *United States v. Morgan*, 313 U.S. 409 (1941) and holding that the mental processes of an administrative decisionmaker were protected from disclosure including the manner and extent of his study of the administrative record and his consultation with subordinates). The cloak of confidentiality may not be used, however, to save an officer or public body from inconvenience or embarrassment. *Dunwell v. University of Arizona*, 134 Ariz. 504, 508, 657 P.2d 917, 921 (Ct. App. 1982); *Ariz. Att'y Gen. Op.* 76-43. Nor may officials deny access simply because the records might be used to establish tort liability on the part of the State. *Ariz. Att'y Gen. Op.* 189-022.

**6.4.4 Requests by Litigants.** The foregoing guidelines on refusing public inspection may not apply when the person requesting access to the records is a party to litigation with the State. In those cases, the party may have a greater right to access than the public generally. See *Grimm*, 115 Ariz. at 269, 564 P.2d at 1235. On the other hand, if a party to litigation against the State requests records under the Public Records Law, the party need not demonstrate that the “documents are relevant to anything” and therefore may obtain records that would not be discoverable in litigation. *Bolm v. Custodian of Records of Tucson Police Dep’t*, 193 Ariz. 35, 39, 969 P.2d 200, 204 (Ct. App. 1998).

## **6.5 Procedure for Handling Requests for Access to Public Records or Other Matters.**

**6.5.1 Duty to Redact.** When confidential and public information are commingled in a single document, a copy of the document may be made available for public inspection with the confidential material excised. *Carlson*, 141 Ariz. at 491, 687 P.2d at 1246; see also *KPNX-TV*, 183 Ariz. at 594, 905 P.2d at 603 (custodian must demonstrate specific reasons and a good faith basis for denying access to entire record rather than redacting confidential portions). If confidential material has been attached to an otherwise disclosable document, the material so attached may simply be removed. See *id.*; *Ariz. Att'y Gen. Ops.* 186-090, 185-097. The public body should note in its records precisely which material has been excised and which has been released.

**6.5.2 Inspection of Public Records.** The right to inspect documents is not unqualified. Records may not be inspected at such times and in such manner as to disrupt public business. See Ariz. Att'y Gen. Ops. I80-097, 78-234, 70-1; A.R.S. § 39-121.01(D)(1) ("Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours.") The public is entitled to inspect information within a reasonable time after a request is made. Ariz. Att'y Gen. Ops. I80-097, 78-234, 70-1.

Whether time and manner are reasonable must in all cases be a factual determination, depending upon the accessibility of the material. If the information requested is on microfilm and thus requires use of a reader/printer to view it, the time for inspection would depend upon the availability of the necessary equipment. If the requested material has been stored off the premises of the agency, additional time might be necessary to retrieve the document requested. Should this occur, the requesting party should be advised, in writing, of the delay and the reason for it. Similarly, if the requested material contains confidential information that must be redacted, the custodian should inform the requesting party that the response will be delayed and the reason for the delay. If the custodian of the record does not have the facilities for making copies, the person requesting the record must be granted access to it for the purpose of making copies. See A.R.S. § 39-121.01(D)(2). However, the copies must be made while the document remains in possession, custody, and control of the custodian. Id.

**6.5.3 Charges for Copies.** The Legislature has distinguished between the fees an agency may require for commercial and non-commercial requests for copies of public records. A.R.S. §§ 39-121.01(D)(1), -121.03(A) infra.

**6.5.4 Non-Commercial Use.** A person requesting copies, printouts, or photographs of public records for a non-commercial purpose may be charged a fee for the records. A.R.S. § 39-121.01; but see Section 6.5.6 infra. An agency may charge a fee it deems appropriate for copying records, including a reasonable amount for the cost of time, equipment, and personnel used in producing copies of records, but not for costs of searching for the records. A.R.S. § 39-121.01(D)(1); *Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (Ct. App. 1980); Ariz. Att'y Gen. Op. I86-090. If an agency is producing documents pursuant to a subpoena in a civil action to which the agency is not a party, the fee is prescribed by A.R.S. § 12-351.

**6.5.5 Commercial Use.** Persons requesting reproductions for a commercial purpose must provide a statement setting forth the commercial purpose for which the records are requested. A.R.S. § 39-121.03(A). As used in this Section, commercial purpose is defined as: the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in

any judicial or quasi-judicial body. A.R.S. § 39-121.03(D). Gathering newsworthy facts from public records to include in a newspaper or other publication is not a commercial purpose. Parks, 178 Ariz. at 605, 875 P.2d at 838. Upon being furnished a signed statement, the custodian may assess a charge that includes the following:

1. A portion of the cost to the [public body] for obtaining the original or copies of the documents, printouts or photographs.
2. A reasonable fee for the cost of time, materials, equipment and personnel [used] in producing such [document or] reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body. A.R.S. § 39-121.03(A).

As with non-commercial requests, the determination of the fee to be charged is made in the first instance by the public body. Among the factors to be considered in making this determination are (1) the time expended in retrieving the records; (2) transportation costs, if any; and (3) the actual cost to the public body in terms of special equipment or processing required in preparing the record for release. If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the Governor requesting that the Governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. Id. § (B).

**6.5.6. Free Copies.** Certain public records must be provided without charge, namely those concerning "a claim for a pension, allotment, allowance, compensation, insurance or other benefits which [are] to be presented to the United States or a bureau or department thereof." A.R.S. § 39-122(A).

## **6.6 Consequences of Wrongful Refusal to Disclose.**

**6.6.1 Attorney's Fees.** If a custodian acts arbitrarily, capriciously, or in bad faith in denying access to a public record, the court may award legal costs, including attorney's fees, to the requester. A.R.S. § 39-121.02(B). A court will not find denial of access to be arbitrary or capricious if taken honestly and upon due consideration, even though the requesting party may believe that the custodian was wrong to deny access. Board of Regents, 167 Ariz. at 259, 806 P.2d at 353 (citing Tucson Public Schs., Dist. No. 1 v. Green, 17 Ariz. App. 91, 94, 495 P.2d 861, 864 (1972)). However, where the custodian refused to disclose an entire file based on a general objection without redacting confidential portions or submitting a redacted version to the court for in camera review, the court found that the custodian abused his discretion. Cox, 175 Ariz. at 15, 852 P.2d at 1199.

**6.6.2 Damages.** A public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. A.R.S. § 39-121.02(C).

## **6.7 Preservation, Maintenance, Reproduction, and Disposition of Public Records.**

**6.7.1 Preservation and Maintenance Generally.** “All records made or received by public officials or employees in the course of their public duties are the property of the state.” A.R.S. § 41-1347(A). Each public body and officer is responsible for preserving, maintaining, and caring for the public records within their offices. A.R.S. § 39-121.01(C). Each officer and public body is required by statute to carefully secure, protect, and preserve public records from deterioration, mutilation, loss, or destruction, unless the records are disposed of pursuant to A.R.S. §§ 41-1347 and -1351. A.R.S. § 39-121.01(C); see Section 6.7.5 infra. The head of each state agency must perform the following duties:

1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities.
3. Submit to the director [of the Arizona State Library, Archives and Public Records], in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency.
4. Submit a list of public records in the agency's custody that are not needed in the transaction of current business and that are not considered to have sufficient administrative, legal or fiscal value to warrant their inclusion in established disposal schedules.
5. Submit to the director lists of all essential public records in the custody of the agency.
6. Cooperate with the director in the conduct of surveys.
7. Designate an individual within the agency to manage the records management program of the agency. The designated individual:
  - (a) Must be at a level of management sufficient to direct the records management program in an efficient and effective manner.
  - (b) Shall act as coordinator and liaison for the agency with the state library.
8. Comply with rules, standards and procedures adopted by the director. A.R.S. § 41-1346(A).

The Director of the State Library, Archives and Public Records is responsible for (a) establishing standards, procedures, and techniques for effectively managing public records and (b) establishing standards and procedures for preparing schedules for retaining records of continuing value and promptly and efficiently disposing of records no longer possessing sufficient administrative, legal, fiscal, research or historical value to warrant their retention. A.R.S. § 41-1345(A)(1) and (3). This statute also makes the Director of the State Library, Archives and Public Records responsible for the preservation and management of records and for authorizing the destruction or disposal of records. A.R.S. §§ 41-1345(A), -1345.01, and -1347.

**6.7.2 Quality and Storage Requirements.** All permanent public records must be

"transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona State library, archives and public records." A.R.S. § 39-101(A). These public records must also be stored and maintained according to standards established by the Director. Id. § (B). A public officer who fails to keep permanent public records in accordance with the standards established by the director is guilty of a class 2 misdemeanor. Id. § (C).

**6.7.3 Size Requirements.** All public records must conform to the standard letter size of 8-1/2 inches by 11 inches, unless they are "engineering drawings, architectural drawings, maps, computer generated printout[s], output from test measurement and diagnostic equipment, machine generated paper tapes," or public records required by law to be a different size or otherwise exempt by law from the standard size requirement. A.R.S. § 39-103. In addition, the Director of the Arizona State Library, Archives and Public Records may exempt documents from the standard size "requirement" if "the Director finds that the cost of producing a particular type of public record [in the standard size] is so great as to not be in the best interests of this state." Id. § (B).

**6.7.4 Reproduction of Public Records.** Each state agency may implement a program for the reproduction by photography or other method of reproduction on film or electronic media of records in its custody. A.R.S. § 41-1348(A). However, prior to instituting the program, the agency must obtain approval from the Director of the Arizona State Library, Archives and Public Records. Id.

**6.7.5 Disposition of Public Records.** The disposition of public records by the State or any of its political subdivisions is governed by A.R.S. §§ 41-1347, -1349, and -1351. A State agency may destroy records when the State Library concludes "that the record has no further administrative, legal, fiscal, research or historical value." A.R.S. § 41-1347(B). The agency may obtain approval to destroy records from the Records Management Division of the State Library on a continuing basis pursuant to a records retention and disposition schedule or, for records not on a retention schedule, pursuant to single request form. (The forms are in Appendix 6.2.) A public officer or other person having custody or possession of any record for any purpose, "who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or secretes" all or part of public record, or permits any other person to do so, is guilty of a class 4 felony. A.R.S. § 38-421; see also A.R.S. § 13-2407 (making it a class 6 felony to tamper with a public record); Section 2.15(3), (19), (22).

## **Part III**

### **Frequently Asked Questions**

1. What is a public record?
2. Who is required to disclose public records?
3. Can a public body charge a fee for public records?
4. What should a public body do if a member of the public requests electronic documents?
5. How long is a public body required to keep records?
6. Can a public body require the public use a specific form to make a public records request?
7. How much time does a public body have to respond promptly to a public records request?
8. Does a public body have to provide an index of withheld records?
9. Are emails sent from a personal email account public records?
10. What are the penalties for failure to comply with Arizona Public Records Law?

## Frequently Asked Questions

### 1. What is a public record?

A public record is any record that is reasonably necessary or appropriate to maintain an accurate knowledge of a public body's official activities which are supported by monies from the state or any political subdivision of the state. This includes all books, papers, maps, photographs or documentary materials, regardless of physical form or characteristics, including prints, or copies of such items produced or reproduced on film or electronic media made or received by any governmental agency in pursuance of law or in connection with the transaction of public business. See A.R.S. §§ 39-121.01(B) and 41-1350.

### 2. Who is required to disclose public records?

Public bodies in Arizona are subject to the Arizona Public Records Law. A public body includes the state, any county, city, town, school district, political subdivision or tax-supported district in the state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from the state or any political subdivision of the state. A.R.S. § 39-121.01(A)(2).

Individual persons within a public body are required to comply with the requirements of Arizona Public Records law. These individuals include any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body. A.R.S. § 39-121.01(A)(1).

### 3. Can a public body charge a fee for public records?

An agency may charge any fee it deems appropriate for copying records, including a reasonable fee for cost of time, equipment and personnel used in producing copies of records subject to public disclosure, but not costs of searching for the records. Op.Atty.Gen. No. I86-090. There is no fee to inspect the records.

### 4. What should a public body do if a member of the public requests electronic documents?

If a public entity maintains a public record in an electronic format, then the electronic version, including any embedded metadata, is subject to disclosure. *Lake v. City of Phoenix*, 222 Ariz. 547, 218 P.3d 1004 (2009).

### 5. How long is a public body required to keep records?



Each agency is required to follow a records retention schedule. A.R.S. § 41-1347. Arizona State Library and Archives has the authority to determine the minimum and maximum lengths of record retention.

6. Can a public body require the public use a specific form to make a public records request?

Unless otherwise provided by statute, a public records requestor is obligated to provide a description of the item requested and whether it will be used for a commercial or noncommercial purpose. A public body may ask the requestor for additional information (eg. name, phone number, email address, home address, or reason for the request). However, if the requestor refuses to provide this information, it cannot be used as grounds to deny the request. Arizona law does not require that the requestor make a written request. If the requestor refuses to make a written request and insists on making a verbal request, the absence of a written request cannot be the basis for denial.

7. How much time does a public body have to respond promptly to a public records request?

An agency is required to promptly furnish public records to the requestor. "Promptly" is not defined by statute. The courts have held that defining promptness depends on what is reasonable under the circumstances. The relevant factors to consider are the agency's resources, the nature of the request, the content of the records and the location of the records.

8. Does a public body have to provide an index of withheld records?

Generally, only state agencies are required, upon request, to provide an index of withheld records or categories of records that have been withheld and the reasons they were withheld. A.R.S. § 39-121.01(D)(2). All public bodies are required to provide a legal basis for not disclosing a record. A.R.S. § 39-121.01(D)(2).

9. Are emails sent from a personal email account public records?

Public records are evaluated based on their content, not their location. Emails discussing public business sent from personal email accounts may be considered public records subject to disclosure.

10. What are the penalties for failure to comply with the Arizona Public Records Law?

There are criminal penalties for failure to comply with your agency's records retention schedule. A person having possession of any public record who knowingly and without lawful authority destroys, alters or removes all or part of the record or permits any other person to do so, is guilty of a class 4 felony. A.R.S. § 38-421. There are civil penalties for failure to produce public records when requested. The court may award legal costs

and attorney's fees to the requester. The public officer or agency may also be liable for damages that result from wrongfully denying a person access to public records. A.R.S. § 39-121.02(C).

## Part IV

### Legal Authority

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- [Examples of Public Records Determinations](#)
- [Examples of Withholding Public Records Based on Confidentiality](#)
- [Examples of Balancing the Invasion of Privacy Against the Public Benefit](#)
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## Legal Authority

### Public Bodies and Public Records

Arizona Public Records Law is a state statute and the Freedom of Information Act is a federal statute. Federal Freedom of Information Act, 5 U.S.C.A. § 552 et seq., does not apply to state agencies. An Arizona public body can not use an exception contained in the Freedom of Information Act. Op.Atty.Gen. No. R75-721, p. 47, 1976-77.

When Arizona law does not directly address an issue regarding disclosure of public records, Arizona courts may look to Federal Freedom of Information Act for guidance. Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co. (App. Div.1 1997) 188 Ariz. 499, 937 P.2d 689, as amended, review granted, vacated 191 Ariz. 297, 955 P.2d 534.

For purposes of the Arizona public records statute, a “public record” is: (1) a record made by a public officer in pursuance of a duty, the immediate purpose is to disseminate information to the public, or to serve as a memorial of official transactions for public reference; (2) a record required to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done; or (3) a written record of transactions of a public officer in his office, which is a convenient and appropriate method of completing his duties, and is kept by him as such, whether required by law or not. Lake v. City of Phoenix (App. Div.1 2009) 220 Ariz. 472, 207 P.3d 725, review granted in part, vacated in part 222 Ariz. 547, 218 P.3d 1004.

All records stored by a public body are not necessarily public records. The nature and purpose of the information determines whether the information meets the definition of a public record, not the physical location of information. Lake v. City of Phoenix (App. Div.1 2009) 220 Ariz. 472, 207 P.3d 725, review granted in part, vacated in part 222 Ariz. 547, 218 P.3d 1004.

Arizona law defines “public records” broadly and creates a presumption requiring the disclosure of public documents. Documents of a purely private or personal nature are not public records. However, these documents may be viewed by a third party to determine whether they meet the definition of a public record. Only those documents having a “substantial nexus” with a government agency's activities qualify as public records under public records law. E-mails that relate solely to personal matters do have substantial nexus with government activities. Griffis v. Pinal County (2007) 215 Ariz. 1, 156 P.3d 418.

When an agency finds that part of a document should be withheld, the agency is required to redact the withheld portion of the public record and produce the remainder of the public record. Public inspection should not be denied entirely since other alternatives exist such as deletion of specific personal identifying information. Agencies should

produce a redacted copy of the document rather than withholding the entire document. *Carlson v. Pima County* (1984) 141 Ariz. 487, 687 P.2d 1242.

The evaluation of a public records request involves a two-step process: first determine whether that document is a public record, and if a document falls within the scope of the public records statute, then the presumption favoring disclosure applies. If necessary, the agency must perform a balancing test to determine whether privacy, confidentiality, or the best interests of the state outweigh the policy in favor of disclosure. *Griffis v. Pinal County* (2007) 215 Ariz. 1, 156 P.3d 418.

Determination that a record is a public record or other matter and available for public scrutiny must first be made by the officer or agency who is the custodian of the records sought to be obtained, and damages and attorney's fees may be assessed if the officer or agency wrongfully withholds copies of the record. *Op. Atty. Gen. No. R75-781*, p. 141, 1975-76, p. 50, 1976-77

### **Examples of Public Records Determinations**

Release of names of signers of annexation petitions was not against the public interest as the annexation process is not meant to be clothed in secrecy but rather to be subject to open discussion and debate. *Moorehead v. Arnold* (App. Div.2 1981) 130 Ariz. 503, 637 P.2d 305.

Application forms used for native plant removal and transportation permits must be made available for public inspection within a reasonable time after a request is made and at a time and in a way which will not cause disruption of public business. *Op. Atty. Gen. No. I80-97*.

The sheriff who prepared an offense report stating that an inmate had been accused of forcible oral sex upon a fellow jail inmate, was required to prepare such report pursuant to statute requiring sheriff to keep county jail and prisoners therein. Law enforcement officers are required to keep peace. Therefore, such a report was a "public record" which was required to be kept and made available to public on request. *Carlson v. Pima County* (App. Div.2 1983) 141 Ariz. 517, 687 P.2d 1272, approved as supplemented 141 Ariz. 487, 687 P.2d 1242.

Written information which had been voluntarily given to a legislator by a private party, accompanied by a cover letter asking that the documents remain confidential, could be made public pursuant to this section relating to the inspection of public records. *Op. Atty. Gen. No. I79-292*.

A public records request may be made in the absence of or in advance of any litigation or anticipated claim. *Bolm v. Custodian of Records of Tucson Police Dept.* (App. Div.2 1998) 193 Ariz. 35, 969 P.2d 200, 283 Ariz. Adv. Rep. 13.

An example of a record or information which is subject to disclosure as a matter of right to the public is a record of the actual expenditure of public monies. Op.Atty.Gen.No.70-1.

If one agency transfers a public document to another, the receiving agency must also exert control over document before disclosure could be compelled. Agency has “control” over documents for purposes of public disclosure if documents come into agency's possession in legitimate conduct of official duties; mere physical possession does not impart control. Salt River Pima-Maricopa Indian Community v. Rogers (1991) 168 Ariz. 531, 815 P.2d 900.

### **Examples of Withholding Public Records Based on Confidentiality**

*Public records that are confidential by statute, rule or a recognized privilege (eg. attorney-client privilege) should be withheld.*

A promise of confidentiality, standing alone, is not sufficient to withhold government records. Moorehead v. Arnold (App. Div.2 1981) 130 Ariz. 503, 637 P.2d 305.

The fact that a member of the public submitting information under hazardous waste regulations designates material as “confidential” or “trade secret” does not determine whether the department of health services should protect the material from disclosure, but it may be a factor in a department's determination. Op.Atty.Gen. No. I80-217.

Information noted on an accident report, such as citations or arrests made in connection with the accident being investigated, is a public record available for inspection. If the arrest record notations are from confidential Department of Public Safety criminal history data, they should be redacted before the report is made available. Op.Atty.Gen. No. I89-022.

Accident reports of Arizona department of public safety are public records and should not include arrest information, since disclosure of criminal history record information would be a violation of § 41-1750 relating to criminal identification. Op.Atty.Gen. No. I81-088.

Financial statements filed by contractors are confidential and are not required to be disclosed by this section relating to the inspection of public records. Op.Atty.Gen. No. I79-140.

Prison authorities lawfully denied prisoner access to his master record file and Public Records Law, § 39-121 et seq., did not apply to the master record file as § 31-221 specifically limits access to master record files to employees of Department of Corrections. Berry v. State, Dept. of Corrections (App. Div.1 1985) 145 Ariz. 12, 699 P.2d 387.

Trade secrets are protected by the confidentiality exception to disclosure under the public records law. *Phoenix Newspapers, Inc. v. Keegan* (App. Div.1 2001) 201 Ariz. 344, 35 P.3d 105, review denied.

### **Examples of Balancing the Invasion of Privacy Against the Public Benefit**

*The custodian has discretion to deny public inspection when the disclosure would invade privacy and that invasion outweighs the public's right to know.*

The names and resumes of persons in the final candidate pool for appointment to presidency of a state university were subject to disclosure because the final candidates knew they were being considered for the position, had expressed desire for it and the public had legitimate interest in names of persons being seriously considered for an important position. *Arizona Bd. of Regents v. Phoenix Newspapers, Inc.* (1991) 167 Ariz. 254, 806 P.2d 348.

In balancing considerations such as privacy against the general public interest in disclosure, it is relevant to examine whether the information in question is available through alternative means. *A.H. Belo Corp. v. Mesa Police Dept.* (App. Div.1 2002) 202 Ariz. 184, 42 P.3d 615, review denied.

Due to the family's privacy concerns, the city police department was not required to release audiotape of emergency assistance call in which child was heard crying and whimpering. A transcript of the call was provided and there was no evidence that disclosure of the audiotape advanced the purpose of the Public Records Act in any way. *A.H. Belo Corp. v. Mesa Police Dept.* (App. Div.1 2002) 202 Ariz. 184, 42 P.3d 615, review denied.

While state employees' home addresses and telephone numbers are public records because they are necessarily maintained in the course of official duties, they may not be disclosed in response to a request by the American Federation of State, County, and Municipal Employees (AFSCME). The privacy interest of state employees in their home addresses and telephone numbers and the harm that disclosure would cause state agencies' ability to hire and retain quality employees outweighed the public's interest in such access. Op. Atty. Gen. No. I91-004.

A school district properly withheld teachers' birthdates from a broadcasting company and a reporter, who intended to run criminal background checks on public school teachers to see if any of them had criminal records. The public interest in disclosure did not override privacy interest of teachers, when the broadcaster and reporter were unable to provide any basis for believing that any of the thousands of teachers posed a threat to public school children. *Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.* (1998) 191 Ariz. 297, 955 P.2d 534.

## **Examples of Withholding Public Records Based on a Determination that Disclosure is Detrimental to the Best Interest of the State**

*A public body may withhold a public record if disclosure would significantly impair the agency's ability to complete its required duties.*

The standard "detrimental to the best interest of the state" permits an agency to designate a record as confidential only when effectiveness of the agency in the performance of its duties will be significantly impaired if disclosure of the information is made. A public body may not use a cloak of confidentiality to save an officer or agency from inconvenience or embarrassment. Op.Atty.Gen. No. I83-006 (Addendum).

The public records disclosure exception for the best interest of the state does not support withholding of accident reports because they may be adverse to the state's litigation interests. Op.Atty.Gen. No. I89-022.

Allegations concerning suspension or revocation of a license to hold, operate, or conduct a bingo game may be withheld from disclosure under § 39-121 upon a determination that disclosure would seriously impair a civil or criminal tax investigation. Op.Atty.Gen. No. I85-022.

The test for determining whether police investigatory reports should be disclosed is whether a release of a record would have important and harmful effect upon official duties of official or agency. *Little v. Gilkinson* (App. Div.2 1981) 130 Ariz. 415, 636 P.2d 663.

Disclosure of public records relating to an investigation was appropriate where documents in the possession of police department were all over 20 years old, there was no ongoing investigation to which they pertained nor was any further investigation contemplated, and the police department did not explain any specific harm that would be incurred by disclosure of the requested documents. The police department contended that investigative files, and particularly inter and intraagency communications, originally intended to be confidential, should remain confidential indefinitely and that efficient functioning of law enforcement agencies would be undermined by any disclosure of investigatory materials no matter how stale. The court determined that disclosure was required. *Church of Scientology v. City of Phoenix Police Dept.* (App. Div.1 1979) 122 Ariz. 338, 594 P.2d 1034.

City police department could refuse access to files of on-going investigations if release of the information would hinder an investigation or interfere with official duties. Op.Atty.Gen. No. I79-296.

If only a small portion of the information contained in a records requested to be made available for public scrutiny would be important and have a harmful effect upon the official duties of the official or agency involved, then only that portion of the record should be redacted and the remainder released for public inspection. A notation should



be made in the released information indicating that portions have been deleted. Op.Atty.Gen. No. R75-781, p. 141, 1975-76, p. 50, 1976-77.

Unless the government puts forward an interest that justifies withholding access to a public record, it does not matter that the information contained within the record is available by alternative means. A.H. Belo Corp. v. Mesa Police Dept. (App. Div.1 2002) 202 Ariz. 184, 42 P.3d 615, review denied.

### **Examples of Redacting and Producing a Public Record**

*If a public record contains both disclosable and non-disclosable information, the public body is required to redact the non-disclosable information and produce the public record.*

Even if portions of a public document merit confidentiality, a practical alternative to the complete denial of access would be deleting specific personal identifying information, such as names. Phoenix Newspapers, Inc. v. Ellis (App. Div.1 2007) 215 Ariz. 268, 159 P.3d 578.

A school district must furnish contract and salary information regarding school district employees to a newspaper reporter so long as appropriate precautions are taken to insure that social security numbers and payroll deductions other than those required by law are not revealed. Op.Atty.Gen.No.I85-023.

Reports of industrial injuries filed with the Industrial Commission are open to public inspection, but the personal identifying information should be redacted from the claim forms, leaving just the name of the employer and nature and cause of the injury. Op.Atty.Gen. No. I86-090.

### **Discussion of Requirements for Denial of a Public Records Request**

Party arguing against disclosure of documents that qualify as public records must specifically demonstrate how production of the documents would violate rights of privacy or confidentiality, or would be detrimental to the best interests of the state. Phoenix Newspapers, Inc. v. Ellis (App. Div.1 2007) 215 Ariz. 268, 159 P.3d 578. Reco

Public records law does not require that public records be furnished within a specific number of days after receipt of the request; rather, in the context of statute providing that access to a public record is deemed denied if a custodian fails to promptly respond to a request, the word “prompt” means quick to act, or requires production of the requested records without delay. Lake v. City of Phoenix (App. Div.1 2009) 220 Ariz. 472, 207 P.3d 725, review granted in part, vacated in part 222 Ariz. 547, 218 P.3d 1004.

In assessing the promptness of a public agency's response to a request for records under the public records statute, a court looks to the time that the original request was made,

and not to the time that the special action seeking access to the records was filed. *Phoenix New Times, L.L.C. v. Arpaio* (App. Div.1 2008) 217 Ariz. 533, 177 P.3d 275, review denied.

Attorneys' fees may be awarded where access to public records is denied if two requirements are met: first, the entity requesting access to the records must be entitled to them, and access must have been wrongfully denied; second, custodian of records must have acted in bad faith or in arbitrary or capricious manner by withholding access to the records. *Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.* (App. Div.1 1997) 188 Ariz. 499, 937 P.2d 689, as amended, review granted, vacated 191 Ariz. 297, 955 P.2d 534.

The board of regents did not act in bad faith in refusing to disclose to media either names and resumes of persons who were in prospect pool for appointment to presidency of state university or names and resumes of persons who were final candidates. The newspapers could not recover attorney fees and costs after they obtained disclosure of final candidates' names and resumes. *Arizona Bd. of Regents v. Phoenix Newspapers, Inc.* (1991) 167 Ariz. 254, 806 P.2d 348.

### **Litigation and Penalties**

Under the public records statute, the public official from whom records have been requested has the burden of establishing that its responses to the requests were prompt given the circumstances surrounding each request. *Phoenix New Times, L.L.C. v. Arpaio* (App. Div.1 2008) 217 Ariz. 533, 177 P.3d 275, review denied.

Where a record is a public record or other matter available for public scrutiny, damages and attorney's fees may be assessed if the officer or agency having custody of the record wrongfully withholds copies of the record. *Op. Atty. Gen. No. R75-781*, p. 141, 1975-76, p. 50, 1976-77.

The newspaper was not entitled to attorney fees incurred at the trial court level and on appeal in special action under public records law that resulted in an order compelling the state to disclose most of the questions from the first administration of the state academic test for high school students. The state did not act in bad faith or in an arbitrary or capricious manner in denying newspaper's request, but had colorable reasons for its limited access policy. *Phoenix Newspapers, Inc. v. Keegan* (App. Div.1 2001) 201 Ariz. 344, 35 P.3d 105, review denied.

The city was not liable for attorney fees for denial of a request for police department hiring records, official commendations, and official reprimands for two police officers who were defendants in a civil lawsuit because the denial was not arbitrary and capricious. The city had disclosed records that it considered relevant and the city's duty to disclose remaining records involved previously unresolved legal issues. *Bolm v. Custodian of Records of Tucson Police Dept.* (App. Div.2 1998) 193 Ariz. 35, 969 P.2d 200, 283 Ariz. Adv. Rep. 13.